Attorney General
Betty D. Montgomery

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September 26, 1995

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: *In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket No. 95-115.*

Dear Mr. Caton:

Enclosed please find the original and ten copies of the **Comments of the Public Utilities Commission of Ohio Concerning the Federal Communications Commission Notice of Proposed Rulemaking in the Matter of the Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General of Ohio

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AEH/kja
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International Transcription Services, Inc.

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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of	)	
	)	
Amendment of the Commission's	)	
Rules and Policies to Increase	)	CC Docket No. 95-115
Subscribership and Usage of the	)	
Public Switched Network	)	

INITIAL COMMENTS OF

THE PUBLIC UTILITIES COMMISSION OF OHIO

The Public Utilities Commission of Ohio (PUCO) hereby submits its comments pursuant to the Federal Communications Commission's Notice of Proposed Rulemaking (NOPR) in CC Docket No. 95-115, In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network. Initial comments are due by September 27, 1995.

Introduction and Background

The Federal Communications Commission (FCC) has requested comments with regard to increasing subscribership on the public switched network in a cost effective manner. Specifically, the FCC seeks comment on how the market can further reduce obstacles that prevent those who want phone service from being able to afford it and to help those who want to maintain it.

The FCC seeks comment on alternatives to help reconnect past subscribers disconnected when they failed to pay interstate long distance charges and to help new and existing low-income subscribers stay connected. The FCC proposes that carriers' deposit rules take into account the diminished credit risk posed by subscribers who agree to voluntary toll restriction. The NOPR considers requiring all local exchange companies (LECs) to offer interstate long-distance blocking services, at reasonable rates, to keep low-income subscribers from being disconnected from the local network. The NOPR seeks information on the LECs' ability to offer related services, such as limiting long-distance usage to preset monthly charges or minutes of use. In the alternative, comment is sought on prohibiting any common carrier from interrupting or disconnecting local exchange service for failure to pay interstate long-distance charges. The FCC also seeks comment on making services available, such as prepaid long distance cards, voice mailboxes or high-volume, low-cost calling facilities, to encourage connection or reconnection of low-income subscribers.

The FCC invites comments on the reasons for telephone non-subscription and further steps that could be taken to increase subscribership among underserved segments of the population. Comment is also sought on methods to measure and define subscribership levels as well as methods to better educate consumers about their subscription alternatives.

The comments of the PUCO, herein, are specifically limited to discussion of FCC proposals relating to disconnection restrictions and call control services. However, the PUCO will also use these comments to inform the FCC of the action which the PUCO has recently taken to open its own docket addressed to the issue of whether to prohibit disconnection of basic local exchange service for the nonpayment of charges related to intrastate service other than basic local exchange service.

Discussion

1. Disconnection Restrictions

The NOPR in CC Docket No. 93-115, at paragraphs 11 through 33, seeks input on the FCC's proposal to prohibit any common carrier from interrupting or disconnecting a subscriber's local exchange service for failure to pay interstate long-distance services. The FCC requests commentors to address its authority to bar local service disconnection, address any technical issues that may be related to selective disconnection, and other issues that may arise concerning the procedures, the costs, and other impacts of implementation. The FCC also notes that it believes that switching technology has advanced to a point where there may be, for all practical purposes, no technical barrier to selective blocking of long distance services.

The PUCO submits that the FCC lacks appropriate jurisdiction to prohibit LECs from disconnecting a subscriber's local service for nonpayment of either intrastate or even interstate long-distance services. In Ohio, as well as in many other states, LECs purchase, prior to collection, the accounts receivable of an IXC for both intrastate and interstate call traffic. In such instances, the uncollected debts attributable to the IXC's provision of long-distance service (including interstate service) become the property of the LEC. Once an IXC's accounts receivable (including those related to interstate call traffic) become the property of the LEC, they lose any connection they otherwise may have had to matters of either federal or interstate concern. Instead, at that point, both the accounts as well as the collection methodologies and mechanisms which the LEC may be permitted to employ with respect to those accounts, become a matter of local jurisdictional concern. The state retains exclusive jurisdiction regarding local service disconnection by a LEC for the nonpayment of long-distance charges (including charges for interstate calls). The PUCO hereby submits that the FCC lacks jurisdiction to decide the issue. Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986). Assuming, for purposes of argument only, that the FCC does have jurisdiction, the PUCO also challenges the claim that it has authority to pre-empt state jurisdiction of local service disconnection for the nonpayment of any intrastate common carrier service (including IXC services provided on an intrastate basis).

The NOPR in the 95-115 docket indicates the FCC's belief that it has full statutory authority to regulate disconnection of local service for the non-payment of interstate charges consistent with its "Maryland" decision, namely, Public Service Commission of Maryland, Memorandum Opinion and Order, 4 FCC Rcd 4000 (1989). That decision denied a petition filed by the Public Service Commission of Maryland ("Maryland PSC"), seeking a declaratory ruling from the FCC which would have conferred to the petitioner sole authority over LEC-provided billing and collection services, including disconnection of basic LEC service for nonpayment of outstanding long distance bills owed to IXCs. In its petition, the Maryland PSC had also sought permission to establish a tariffed local service entitled "disconnection for nonpayment" ("DNP"). Charges for this service were to be assessed at $.0342 per message to all IXCs that subscribed to LEC-provided billing and collection services.

In its Maryland decision, the FCC concluded that it has statutory authority to regulate disconnection of local service for nonpayment of interstate charges. The FCC's conclusion was based on its earlier finding, made within its "Detariffing Order"[1], that

1. CC Docket 85-88, In the Matter of Detariffing of Billing and

the interstate and intrastate components of basic telephone service, relating to disconnection, are inseparable.

As previously stated, the PUCO challenges the FCC's claims of authority to pre-empt state jurisdiction of local service disconnections for the nonpayment of any intrastate common carrier service (including IXC services provided on an intrastate basis). The PUCO submits that the FCC's Maryland decision was premised on technological information that is now outdated. Current technology has advanced to the point that for all practical purposes, there is no technical barrier to the selective blocking of long distance services in most instances. Thus, separate service disconnection of interstate and intrastate common carrier services is now possible. The PUCO's belief that separate service disconnection is possible is further evidenced by the fact that some state jurisdictions, such as Colorado and Pennsylvania, have prohibited disconnection of local service for the nonpayment of IXC bills. As a result of these technological advancements, the PUCO maintains that the FCC's arguments in support of its pre-emptive authority over the states based on technological limitations are no longer sound. The PUCO calls upon the FCC to re-examine its conclusion that disconnection for nonpayment of interstate service charges is inseparable from disconnection for nonpayment of intrastate service charges. Regardless of whether the FCC re-examines it, the PUCO finds fault in the FCC's reliance on this conclusion as the basis for its assertion, made in this case, of its alleged pre-emptive authority over disconnection for nonpayment of intrastate charges. Consequently, the PUCO challenges the FCC claim of pre-emptive authority.

(Footnote 1 continued from previous page)
Collection Services, 102 FCC 2d 1150 (1986).

In the event the FCC determines that a prohibition on local exchange service disconnection for the nonpayment of interstate charges is an appropriate public policy, it should also expand the scope of its investigation to explore the economic and technological feasibility of requiring IXCs to develop their own blocking and screening services that might prevent noncreditworthy customers from placing interstate calls over the IXC's networks. If after the review of the record on this matter, the FCC determines it is more economically feasible for LECs to provide interstate blocking services to IXCs, the PUCO maintains that LECs should be required to tariff interstate blocking services provided to IXCs. Charges assessed to IXCs by LECs for such services must be fully cost compensatory. The PUCO observes that requiring LECs to provide these blocking services to IXCs on a tariffed basis would be consistent with the FCC's July 10, 1992, Order on Reconsideration in CC Docket No. 91-35. In that decision, the FCC determined that all LECs, where technologically feasible, should provide IXCs, on a tariffed basis, international call blocking service, originating line screening service, and billed number screening service.

LECs should be precluded from providing global blocking of interstate toll service at the request of an IXC. The LEC's provision of interstate blocking services must be company specific so that a customer's access to one IXC would not be blocked as a result of that customer's failure to pay charges owed to another IXC.

The PUCO submits that under no circumstance should LEC-provided blocking services be construed to be analogous to the combined LEC and IXC disconnection that was contemplated in the FCC's Billing and Collection Detariffing Order in CC Docket No. 85-88. Specifically, the PUCO challenges the FCC's ability to consider interstate blocking services provided by LECs to IXCs as deregulated billing and collection services. LEC-provided blocking services, which exhaust central office memory and require the development of new software, cannot be considered similar to the disconnection of local exchange service which does not call for the deployment of additional software and actually positively impacts the availability of central office memory.

The PUCO's position on the FCC's lack of jurisdiction over disconnection of local exchange service for nonpayment of long distance charges should not be construed to mean that the PUCO does not consider these issues to be significant policy concerns. In the PUCO's view, prohibiting LECs from disconnecting local exchange service for nonpayment of services other than local exchange service involves disposition of certain issues which are of local concern. The PUCO recently opened a new docket to review its policy regarding the disconnection of basic local exchange service for the nonpayment of charges associated with services other than basic local exchange service. Case No. 95-790-TP-COI In the Matter of the Commission Investigation of Basic Local Exchange Service for the Nonpayment of Charges Associated with Services Other Than Basic Local Exchange Service, Entry issued August 31, 1995. A copy of the Commission's initial entry in this docket, which includes appendices setting forth the PUCO staff's proposal on the issues presented, are included as an attachment to these comments. The PUCO wishes to reiterate, however, that although its staff has now formally taken a position in favor of prohibiting local service disconnection for nonpayment of services other than basic local service, the PUCO will not make a final policy determination until it has reviewed whatever comments may be filed in response to the staff proposal.

2. Call Control Services

The NOPR in CC Docket No. 95-115, at paragraphs 13 through

19, invites comment on whether the FCC should require carriers to offer end users call control services. Specifically, input is requested as to whether or not the FCC should require LECs to provide end users with voluntary restriction of interstate toll services. The toll blocking service envisioned by the FCC would block only those interstate calls for which the subscriber would be charged. The envisioned blocking service would not affect a subscriber's ability to place local calls, collect long distance calls, 800 calls, 9-1-1 emergency calls, or the subscriber's ability to receive any long distance telephone calls for which the subscriber would not be charged. The FCC indicates that the proposed blocking service would not affect intrastate services, which fall under state jurisdiction. The FCC's proposal also suggests, upon a customer's electing voluntary toll restriction services, that he or she should also be afforded the option to prevent collect and calling card services from being billed to the restricted line.

The PUCO supports the FCC's tentative conclusion that any FCC-ordered, LEC-provided blocking service to end users must be limited to the restriction of interstate IXC services. Accordingly, as these proposed LEC-provided blocking services are limited to only interstate calls, the PUCO avers that any additional costs associated with LECs' providing these services must be recovered through the federal jurisdiction consistent with current separations procedures as found in Title 47 C.F.R. Part 36). The PUCO further maintains that the costs involved with providing these services could be recovered through a process similar to that established for the Universal Service Fund whereby monthly charges are assessed to interexchange carriers (IXCs) based on their number of presubscribed lines. The PUCO identifies three discrete costs associated with the LECs' provision of the proposed interstate blocking service: the cost of processing the service order, i.e., costs incurred by a LEC in processing a customer's request to establish interstate blocking service; the cost associated with developing the requisite software to establish interstate blocking services; and the cost associated with the central office memory expended to provide interstate blocking service. The PUCO maintains that these costs must be allocated to and recovered by only the federal jurisdiction.

Additionally, the PUCO notes that the FCC's proposal to permit customers to block incoming interstate collect calls appears somewhat analogous to Billed Number Screening Service, which is intended to prevent the charging of collect and third number calls to a customer's telephone number and is provided via information held in the line information database (LIDB). The PUCO observes that there are four FCC-approved charges, in addition to charges associated with processing a customer's request to establish service, associated with LEC-provided screening of interstate calls: the signal link, the signal transfer point (STP) termination, the LIDB transport, and the LIDB query. Consistent with the PUCO's above-mentioned proposal for cost recovery of FCC-mandated, LEC-provided interstate blocking services, the PUCO maintains that all costs associated with providing end users with interstate billed number screening type services must be recovered through the federal jurisdiction consistent with current separations procedures.

Conclusion

Overall, the PUCO applauds the FCC for opening a docket so broadly addressed, as is CC Docket No. 95-115, to the goal of increasing, in a cost effective manner, subscribership on the public switched network. Clearly, the goal of enhancing universal service is shared by both the PUCO and the FCC. Consequently, the PUCO finds itself pondering, at the state jurisdictional level, many issues and questions which correspond to those posed in the FCC's NOPR in CC Docket No. 95-115.

There are two specific ideas proposed by the FCC which the PUCO has decided to comment on at this time. The first topic involves the question of whether the FCC is authorized to prohibit any common carrier from interrupting or disconnecting local exchange service for failure to pay interstate long-distance charges. The PUCO submits that the FCC is without jurisdiction to decide this issue, which is local and involves only how a LEC may collect amounts owed to it once it has acquired accounts receivable from an IXC. Further, even if, for purposes of argument only, one assumes that the FCC has the requisite authority to decide the disconnection issue with respect to the nonpayment of interstate long-distance charges, the PUCO additionally challenges the FCC's claim of authority to pre-empt state jurisdiction of local service disconnection for the nonpayment of intrastate common carrier service, to the extent that such alleged preemptive authority is premised on the FCC's claim that disconnection of interstate service is inseparable from disconnection of intrastate service.

The second topic on which the PUCO has commented involves the question of whether the FCC should require LECs to provide, at reasonable cost, services which enable end users to voluntarily restrict interstate toll services. In summary, as regards this topic, the PUCO recognizes that LEC-provided blocking services being proposed would not limit a subscriber from placing intrastate calls of any kind, and therefore, at face value, the FCC proposal would appear not to impinge upon matters of jurisdictional concern to the PUCO. However, the PUCO wishes to emphasize in the strongest possible terms that any costs directly attributable the LEC's provision of such services must be recovered through the federal jurisdiction, consistent with current separations procedures.

In closing, the PUCO wishes to thank the FCC for the opportunity to comment in this docket.

Respectfully submitted,

Public Utilities Commission of Ohio
By its Attorneys:

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Dated: September 26, 1995

Attachment

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Investigation into the Disconnection of Basic Local Exchange Service for the Nonpayment of Charges Associated with Services Other Than Basic Local Exchange Service.	)	Case No. 95-790-TP-COI

ENTRY

The Commission finds:

In December 1985, the Commission initiated Case No. 85-1930-TP-COI ("the 85-1930 docket") in response to actions taken over a decade ago at the federal level which left to the states the decision of whether to allow local exchange companies (LECs) to disconnect a subscriber's local telephone service for the nonpayment of charges for message toll services provided by an interexchange carrier (IXC). Upon review of comments and reply comments solicited and received by the Commission during the period between December 1985 and May 1987, the Commission issued a Finding and Order in Case No. 85-1930-TP-COI which established a policy on the issue presented. Briefly stated, the Commission concluded that a LEC could disconnect a subscriber's local service for the nonpayment of IXC toll charges for which the LEC is providing billing and collection services and for which the LEC purchased the IXC's accounts receivable in advance. The Commission also required the LECs to apportion partial payments to regulated LEC charges and IXC toll charges before applying subscriber payments to charges for any other services. That disconnection policy has remained in place, essentially unaltered since the time of the Commission's April 14, 1988 Opinion and Order in the 85-1930 docket.

For reasons which are spelled out in more detail in an entry being issued today in Case No. 85-1930-TP-COI, the Commission has decided to close the 85-1930 docket, but nevertheless and at the same time, to initiate a new investigation in this docket, Case No. 95-790-TP-COI ("the 95-790 docket"), to examine the question of whether the disconnection of basic local exchange service by a LEC for the nonpayment of services other than basic local exchange service service should be prohibited.

One reason for beginning a new investigation, rather than continuing the one commenced in the 85-1930 docket, is to clarify that the new investigation will be broader in scope than the one commenced in the 85-1930 docket. In our new investigation, in the

95-790 docket, we will not be limiting our concern to whether the unpaid message toll charges which would prompt disconnection happen to be for message toll service rendered by IXCs only. Rather, we now intend to expand the scope of our inquiry also to consider whether a LEC should be prohibited from disconnecting its customer from local service for nonpayment of message toll service as rendered by any provider of message toll service, including for any message toll service which the LEC, itself, may provide. Beyond this, we will also explore whether a LEC should ever be permitted to disconnect local service for the nonpayment of discretionary services, again regardless of which service provider is providing those discretionary services.

The Commission takes administrative notice of a number of factors which cause us to believe that now is an appropriate time to propose changing our present disconnection policy, which has been in effect since April 14, 1988. First, we have reason to suspect that the state of toll restriction technology has greatly changed since the time of our initial order in the 85-1930 docket. The evidence for this is seen in the fact that, unlike a decade ago, many, if not most, LECs operating in this state now include toll blocking features among their tariffed service offerings. By implication, then, one basis for the Commission's unwillingness, back in 1988, to prohibit disconnection of local service for nonpayment of IXC toll service charges today apparently no longer prevails.

Second, we believe that the evolution of competition in the local service market, a path down which the Commission has undoubtedly already begun to lead Ohio's telephone users, is likely to create a greater need than may have heretofore existed to ensure that local service features, including disconnection of strictly local service, should now become and remain unbundled from toll service features, including billing and collection of charges incurred in the provision of strictly toll service. At whatever, if any, point in the future when Ohio consumers are able to choose their local service providers from a variety of local service providers, much as they already now choose among interexchange service providers in the long-distance market, it will make little sense to permit the local service provider's business decision whether to engage in the disconnection of it's local service customers for nonpayment of toll charges to be among the factors which would influence the local service customer's choice of local service provider. Nor, conversely, at such a point in the evolution of local competition, would there seem to be any logical necessity for the Commission to compel all local service providers to engage in disconnection of local service for the nonpayment of toll services, or any other service the provision of which may be entirely outside the scope of the local service providers operations and/or business function. In fact, in an emerging competitive market with new entrants and incumbents jockeying for market share, such arrangements, some might argue, could constitute illegal tying arrangements, which would have an anticompetitive effect.

Third, we take great interest in the FCC's recent action to propose adopting federal rules which would prohibit LECs from disconnecting subscribers for failure to pay outstanding interstate long-distance charges. The timing of the FCC's proposal signals us that we, too, should immediately proceed to revisit the corresponding state issue of whether local disconnection for the nonpayment of outstanding intrastate toll charges should, likewise, be prohibited. Then too, inasmuch as we are charged by statute with pursuing the goal of attaining universal service, like the FCC, we are quite interested in the empirical evidence which shows that prohibiting disconnection of local service for nonpayment of toll charges increases telephone subscribership.

We have begun studying the experiences of other states which currently prohibit disconnection of local service for nonpayment of toll charges. One preliminary conclusion we have drawn is that these states have an average subscribership level which surpasses the national average subscribership level.

Based on all the reasons given above, we have decided to open a new investigation into the question of whether to prohibit the disconnection of local service for nonpayment of toll service. As mentioned, this would include toll service provided by a LEC. In order to initially frame the issue, we have decided to publicize and put out for public comment, a staff proposal, attached as Appendix B. However, there should be no question that the Commission's existing policy on disconnection, as adopted in the 85-1930 docket and codified in Rule 4901:1-5-31, O.A.C., shall remain in full effect during the further pendency of this case, unless and until the Commission orders otherwise.

As will be made clear from a review of the appendices to this entry, the Commission's staff has now taken an initial position in favor of prohibiting LECs from disconnecting their customers from basic local exchange service[1] for the nonpayment of unregulated service of any kind, nonpayment of IXC-provided toll service, and nonpayment of LEC-provided services other than basic local exchange service including both toll and discretionary services. It

1. For purposes of this entry, basic local exchange services shall be considered as including the following components: (1) the local loop, (2) local termination, (3) local usage (including touch-tone service), and (4) access to 9-1-1 service (where available).

is important to note, however, that the Commission, itself, has not yet reached any conclusion on the issues being addressed in the 95-790 docket. The appendices attached to this entry reflect the staff's recommendation only and the viewpoints expressed or implied therein are in no way binding on the Commission in making its own final determination in this matter. The Commission will only issue its final decision on these issues after interested members of the public have been afforded an opportunity to file comments and/or reply comments on the staff's proposal. The Commission will, of course, carefully review and consider any such comments and/or reply comments prior to deciding how ultimately to proceed in this case.

Appendix A to the entry contains a statement explaining the staff's initial recommendation to the Commission in the 95-790 docket. Appendix B to this entry sets forth a detailed description of the staff's proposed new regulatory policy on disconnection, itself. Appendix C to this entry sets forth a staff recommended procedure for LECs to follow in order to inform the Commission of why, in particular situations, technological reasons might prevent them from complying with the staff-proposed regulatory policy if ever it were to be adopted by the Commission.

At this time, the Commission invites all stakeholders and interested persons or entities to submit comments on the staff's proposal in this docket, as set forth in Appendices A, B, and C to this entry. Initial comments must be filed with the Commission by October 3, 1995, and reply comments must be filed by October 18, 1995. Upon receipt of the initial comments, an attorney examiner's entry will be issued setting forth a list of persons and entities who filed comments and directing the commentors to serve copies of their initial comments on all other commentors. Those persons or entities filing reply comments must serve copies of the reply comments on all persons or entities who filed initial comments.

ORDER:

It is, therefore,

ORDERED, That all interested persons or entities are invited to file in the 95-790 docket, comments and reply comments to the staff's proposal as set forth in Appendices A, B, and C to this entry, by October 3, and October 18, 1995, respectively. It is, further,

ORDERED, That a copy of this entry be served upon all local exchange companies, all interexchange carriers, and all radio common carriers certified to operate in the State of Ohio; the Ohio Telephone Association; the Office of Consumers' Counsel; the

Ohio Department of Development; the Ohio Department of Aging, the Ohio Cable Television Association, the Legal Aid Society of Cleveland, the Legal Aid Society of Dayton; the cities of Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo; and all interested persons of record in Case No. 95-790-TP-COI.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Richard M. Fanelly

Ronda Hartman Fergus

David W. Johnson

DEF/vrh

Entered in the Journal
AUG 31 1995

A True Copy

Gary E. Vigorito
Secretary

APPENDIX A

Staff Recommendation

The staff recommends that the Commission consider adopting a new disconnection policy which would substantially limit the ability of LECs to disconnect local exchange service customers for nonpayment of charges unrelated to the provision of local exchange service by the LEC. In essence, the staff proposes that, wherever it is technologically feasible to separate the disconnection of basic local exchange service[1] from the disconnection of other types of service, LECs should be prohibited from disconnecting their local exchange service customers from basic local exchange service for the nonpayment of unregulated service of any kind, the nonpayment of IXC-provided toll service, and the nonpayment of LEC-provided services other than basic local exchange service including both toll and discretionary services. Appendix B sets forth a detailed and complete description of the staff's proposed new disconnection policy.

The staff concurs with the position taken by the Commission, in the entry being issued today, that an appropriate time has now arrived for the Commission to revisit, with a fresh perspective, its existing policy on disconnection, which, as it happens, has been in place without major revision since 1988. Briefly stated, this policy allows LECs to disconnect local exchange service when a customer fails to pay IXC toll charges for which the LECs are the IXC's billing and collection agent. The staff believes that the Commission's underlying rationale for this policy which existed at the time it was established -- that toll restriction technology was not then sufficiently deployed and that, at the time, it seemed prohibitively expensive to retrofit billing systems of LECs and IXCs so as to enable local service to be provided while the provision of IXC toll service is barred -- may, today, no longer be valid. In the staff's view, the increase since 1988 in the availability and deployment of toll restriction service offerings, from and by LECs throughout the state of Ohio, has been been so substantial that no longer should either technology or cost be seen as a legitimate impediment to widespread use of toll restriction as a means of allowing local exchange service to continue without threat of disconnection for nonpayment of toll charges, even while the continued provision of toll ser-

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1. For purpose of this Staff proposal, basic local exchange service consists of the following components: (1) local loop, (2) loop termination, (3) local usage (including touch-tone service), and (4) access to 9-1-1 service (where applicable).

vice is barred.

The notion that the Commission's existing policy should, even now, continue unchallenged, premised, as it long has been, on the goal of protecting certain IXCs, and/or the LECs who do their billing and collection, from incurring costs associated with redesigning their billing systems so as to enable local and IXC services to be separately disconnected, is a striking example of how far the arena of telecommunications deregulation has evolved in just the past decade. At the time of the inception of the 85-1930 docket, LEC-provided billing and collection was viewed as a regulated component of telecommunications utility service. This was no longer the case, and billing and collection was found to be detariffed after the effective date of the Commission's decision in In the Matter of the Commission's Investigation Into the Detariffing of Billing and Collection Services Offered by Ohio's Local Exchange Companies Case No. 86-2174-TP-COI Opinion and Order issued October 6, 1987, effective January 1, 1988. Now that the nonjurisdictional status of billing and collection is clear, the staff believes that any costs and expenses which either the IXCs or LECs expend in accomplishing billing and collection activities, including those incurred in the design and implementation of such new billing systems as might be necessary to affect a regulatory policy which prohibits disconnection of one service for the nonpayment of charges associated with another service, are not jurisdictional facts which the Commission must consider in choosing whether to adopt such a new disconnection policy.

The Staff believes that a new disconnection policy which would severely limit the ability of LECs to disconnect basic local exchange service subscribers for the nonpayment, not only of toll charges, but also for the nonpayment of virtually any service other than basic local exchange service, would move this Commission significantly closer to its goal of achieving universal telephone service throughout the state of Ohio. As noted in the Commission's entry being issued today, the FCC is currently studying the idea of adopting a rather similar policy for the very same reason. In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket 95-115, (Notice of Proposed Rulemaking adopted July 13, 1995 and released July 20, 1995). The FCC has already made a preliminary finding, in full accord with the Staff's viewpoint discussed immediately above, that switching technology has advanced to a point where there may be, for all practical purposes, no technical barrier to selective blocking of long distance calls, or the provision of local, but not long-distance services. Further, according to the FCC:

> ...This new technological capability has accompanied increased service options, greater com-

> petition in all markets, as well as greater consumer sophistication in the purchase and use of telecommunication services. It is now feasible to offer telephone service as a menu of unbundled elements. More importantly, there appears to be no legal or practical requirement to disconnect local service if...long-distance is voluntarily or involuntarily disconnected, and there are sound public policy reasons for preventing disconnection of local service...
>
> There also is empirical evidence that prohibiting disconnection of local service for nonpayment of toll charges increases telephone subscribership. The Commonwealth of Pennsylvania, one of the first jurisdictions to take such action, has the highest subscribership rate among the 50 States and the District of Columbia, up from eighth a decade ago. This statistic, along with the strong survey evidence that the single most significant cause of nonsubscribership is disconnection of subscribers because of inability to control toll call usage, leads us to consider prohibiting local exchange carriers from disconnecting subscribers for failure to pay outstanding interstate long-distance charges because we expect that such action may increase subscribership nationwide.

The staff believes that this Commission, like the FCC, should sit up and take notice of what has happened in Pennsylvania as a result of its adoption of a "no disconnect" rule. Under Pennsylvania statutory law, charges for basic local exchange service, non-basic services (i.e., discretionary services such as call-waiting, and interexchange service) must be billed separately. A Pennsylvania customer's failure to pay charges for either non-basic or interexchange service may not be a basis for temporary suspension or termination of local exchange service. As long as a customer keeps current on charges for basic local exchange service, that service may not be cut-off. According to the FCC, in 1984, the year before its "no disconnect" rule was implemented, Pennsylvania had a subscribership level of 94.9 percent. In 1994, Pennsylvania's subscribership level was 97 percent. Among households with annual incomes less than $10,000 Pennsylvania had a subscribership level of 92.3 percent in March 1993, compared to only 87.4 percent nationwide in the same period.

Having reached the decision that, in light of changes in technology as well as in the evolution of telecommunications deregulation which have occurred over the past decade, now would an be an appropriate time for the Commission to revisit its existing disconnection policy, the staff has endeavored, on its own, to fashion an initial proposed disconnection policy which the staff believes to be in comportment with today's evolving, and increasingly more competitive, telecommunications regulatory environment. That specific proposal is attached as Appendix B to the entry in this case. What immediately follows is a brief description of the Staff's rationale for its proposal.

Overall, the staff's initial position is that universal telephone service in the State of Ohio is likely to be greatly enhanced by a disconnect policy which, like in Pennsylvania, separates service into three broad categories: local exchange service, toll service, and discretionary services and then requires that, so long as local exchange service customers keep current on charges for local exchange service, that service may not be disconnected. Second, it appears to the Staff that no readily available basis exists for continuing the Commission's existing disconnection policy. Rather, we agree with the FCC's premise that, where separate toll disconnection (whether through voluntary or imposed toll restriction) is a technologically feasible alternative method of enforcing collection of unpaid toll charges, no legal or practical requirement exists to allow disconnection of local service to be used instead. Third, the Staff sees no logic to prohibiting disconnection of local service for noncollection of toll charges, while still leaving open the possibility of using disconnection of local service for redressing nonpayment of charges for discretionary services. In fact, the staff thinks it would be appropriate to establish a scale of priorities with respect to which services should be considered as more basic or vital than others, and which, accordingly, are entitled to relatively greater protection from the reach of disconnection activities.

The staff is proposing that, when disconnecting a residential subscriber's basic local exchange service, LECs should be required to continue providing incoming call receiving capability for a minimum 30-day period beyond the date when all applicable disconnection notice requirements have been complied with and disconnection of all other components of basic local exchange service (except access to 9-1-1 service) may legally occur. The staff believes that its proposed two-step disconnection procedure will enhance the State of Ohio's universal service objectives. The procedure would provide for a minimum 30-day period during which a "warm line" will be maintained, i.e., although the customer will not be able to incur additional charges for outgoing usage (other than the minimal 9-1-1 service charge), service will remain intact in the sense that the possibility of reconnecting basic local exchange service during the period (as opposed commencing a new service installation after the period, which is more expensive to both the company and the customer) remains a viable option.

Similarly, for purposes of generally promoting public health and safety, the staff is also proposing that access to 9-1-1 service be maintained indefinitely even after a final disconnection of all other components of basic local exchange service has occurred. The staff believes that the cost of maintaining access to 9-1-1 service would not outweigh the public safety benefit which would accrue if the staff's proposal with respect to 9-1-1 service were to be implemented. In any event, the staff welcomes comments on the technological feasibility and projected economic impact of its proposal.

The staff has also proposed that customers, when ordering service, should be able, for the price of a nonrecurring fee of no more than $10.00, to exercise an option to block all toll services (i.e., those provided by both LECs and IXCs). The staff believes that this proposal, too, would enhance universal service by providing an affordable, optional, "automatic" method by which customers may decide to control some of their calling charges. According to a recent study[2], finding ways to help people control their calling charges will do more than any other single thing to keep people on the network and thus, over time, increase penetration. The staff believes that the affordability of a toll blocking option is key to its viability as a choice which customers might exercise in attempting to control calling charges. Therefore, the staff believes that placing a $10.00 ceiling on the price of toll blocking options is justified on public policy grounds.

The staff takes this opportunity to indicate affirmatively that, under the staff proposal, LECs will certainly still be able to use disconnection as a method of enforcing payment of outstanding charges owed to it in each and every service category. Concerned that otherwise its proposal might seem confusing, the staff will now address the procedures which LECs would need to follow in order to do so. If, after proper disconnection notice has been given, and after any partial payments received have been applied in accordance with the order of priority set forth in staff-proposed Rule IV, there remain any unpaid charges for a particular category of service, the LEC may use disconnection of that particular category of service as a method for enforcing payment of the remaining charges within that service category.

In terms of the timing of its disconnection activities, the LEC should follow a three step process. The first step involves

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2. Affordability of Telephone Service, A Survey of Customers and Non-Customers, conducted by Field Research Corporation, jointly funded by GTE and Pacific Bell, mandated by California Public Utilities Commission, Presentation Pamphlet, at 6 (1995).

giving of notice of impending disconnection. The second step, a description of which should be included in the disconnection notice, involves the imposition of a temporary disconnection, for a minimum 30-day period during which reconnection is possible. The third step, a description of which should also be included in the disconnection notice, is final disconnection. Reconnection is no longer available once final disconnection has occurred. Instead, new installation of service is the only way service could be restored once a final disconnection has occurred.

The disconnection notice should set forth the earliest date on which temporary disconnection for each service category will occur if payment is not received first for all outstanding service charges within that respective service category. This temporary disconnection date would coincide with the date of disconnection, as that term is used in existing Rule 4901:1-5-34, O.A.C. The notice should also set forth a date for final disconnection, at least 30 days from the temporary disconnection date. If during the 30 days, payment is received which is sufficient to cover all charges within a respective service category, considered in its respective order of priority, along with the reconnection fee established within that respective service category, then reconnection of that service shall occur, temporary disconnection of that service shall end, and final disconnection of service within that respective service category shall have been avoided, all contemporaneously with receipt of that payment. Otherwise, if no sufficient payment is received within the period, then after the 30-day period, the company shall be permitted to impose final disconnection for each service in each category in which charges and/or applicable reconnection fees remain outstanding at the end of the 30-day period.

The staff proposal will obviously, if adopted, have an impact on some of the Commission's existing minimum telephone service standards which relate to disconnection. The following is a brief description of how the staff anticipates that those rules would be affected:

<u>Rule 4901:1-5-31</u>

1) Rule 4901:1-1-5-31 (A)(1), O.A.C., which indicates that service may be disconnected for subscriber nonpayment of regulated LEC-provided services, would need to be amended to indicate that such disconnection may still occur, but that, at a minimum, disconnection of different categories of service would occur only when outstanding charges remain within each respective service category once proper notice has been given and partial payments, if

any, have been applied in accordance with the order of priority set forth in staff proposed Rule IV.

2) Rule 4901:1-1-5-31 (A)(2), O.A.C., which essentially codifies the disconnection policy established in the 85-1930 docket, would need to be revoked.

3) The only other portion of Rule 4901:1-1-5-31, O.A.C., which would probably be affected by the staff proposal would be Section (B)(5) of that rule. That section sets forth due process (adequate notice and opportunity to be heard) requirements which would apply in situations covered by Section (A) of Rule 4901:1-5-31, O.A.C. The staff anticipates that all such existing due process requirements as pertain to Rule 4901:1-1-5-31 (A)(1), O.A.C., would remain intact, while those pertaining Rule 4901:1-5-31 (A)(2), O.A.C., (which the staff believes will be revoked) will be eliminated.

Rule 4901:1-5-32
and
<u>Rule 4901:1-5-33</u>

The staff does not foresee that its proposal would likely result in a need to revise the existing provisions of either Rule 4901:1-5-32, O.A.C., or Rule 4901:1-5-33, O.A.C. However, it seems likely that adoption of the staff's proposal might cause the Commission to decide to add additional provisions to the former rule, which spell out reasons which the Commission deems insufficient for denying or disconnecting residential or nonresidential service. For example, the Commission might wish to codify the idea that basic local exchange service should not be disconnected for nonpayment of charges for services other than basic local exchange service. Or perhaps it will choose to make a more generic statement, to the effect that failure to make sufficient payment of charges within a particular service category shall constitute sufficient reason to disconnect service within that service category, but shall not constitute sufficient reason to disconnect service within a service category that is entitled to higher priority of payment status.

Rule 4901:1-5-34

1) The staff anticipates that this rule, which pertains to the general topic of payment schedules and disconnection procedures for nonpayment, will probably need to be substantially revised.

2) The staff anticipates no change to Section (A).

3) The staff anticipates the rule will need to be revised to distinguish between temporary and final disconnection. The staff anticipates that a revision will be made which would in essence indicate that, at least in terms of the timing of disconnection, the term "disconnection" as it appears in Section (B) and (C) of the current form of the rule, refers to the staff's proposed concept of temporary disconnection. The staff anticipates that revisions to the rule will be made to explain that final disconnection, in any particular service category, can occur no sooner than thirty days after the date of temporary disconnection for that service category, and even then, only when payments received by that date are insufficient, given priority of payment considerations, to permit reconnection of service within the particular service category under consideration.

4) The staff anticipates that, to the extent the rule is revised to distinguish between temporary and final disconnection, it will need to be worded in a way which will distinguish temporary and final disconnection in the context of basic local exchange service from temporary and final disconnection in the context of other service categories.

As stated elsewhere in Appendix A, that distinction is this: temporary disconnection of basic local exchange service, in the staff's view, contemplates continued ability to receive incoming calls, as well as access to 9-1-1 service during the period of